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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,676	03/09/2001	Michael W. Pantoliano	1503.011000E	1270

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WASHINGTON, DC 20005

EXAMINER
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SNAY, JEFFREY R

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/801,676

Applicant(s)

PANTOLIANO ET AL.

Examiner

Jeffrey R. Snay

Art Unit

1743

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 54-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 54-58, 65 and 67-70 is/are rejected.
- 7) ☒ Claim(s) 59-64 and 66 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 18, 33 and 74 of U.S. Patent No. 6,020,141. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to an automated method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as necessary for the desired automation.

3. Claims 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 17 of U.S. Patent No. 6,214,293. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the patented claims are narrower and include all of the presently recited limitations of the computer program product.

4. Claims 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 34 of U.S. Patent No. 6,036,920. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower and include all of the presently recited limitations of the computer program product.

5. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 6 of U.S. Patent No. 6,569,631. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to an automated method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as necessary for the desired automation.

6. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 7 of U.S. Patent No. 6,303,322. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the

patented claims which are drawn to a method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as in order to enable automation of the method, as was conventionally done in the art of clinical chemistry.

7. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 and 8 of U.S. Patent No. 6,291,191. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to an automated method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as necessary for the desired automation.
8. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 6 and 13 of U.S. Patent No. 6,232,085. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to an automated method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as necessary for the desired automation.

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9. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 4, and 13 of U.S. Patent No. 6,268,158. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to an automated method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as necessary for the desired automation.

10. Claims 54-58, 65 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23-25 of U.S. Patent No. 6,268,218. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are narrower than the instant claims and include all of the presently recited limitations. Regarding the presently recited computer program product, such would have been obvious over the patented claims which are drawn to a method comprising a series of steps. The provision of a computer program product for performing those states would have been obvious as in order to enable automation of the method, as was conventionally done in the art of clinical chemistry.

***Allowable Subject Matter***

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11. Claims 59-64 and 66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to teach or fairly suggest the presently recited algorithms for determining and comparing thermal unfolding curves.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Snay whose telephone number is (703) 308-4032. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeffrey R. Snay  
Primary Examiner  
Art Unit 1743

jrs  
June 30, 2003